

Introduced by Senator Calderon

February 10, 2010

An act to amend Sections 25658 and 25662 of, and to add Section 25667 to, the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

SB 1011, as introduced, Calderon. Underage drinkers: immunity of prosecution.

The Alcoholic Beverage Control Act provides that any person under the age of 21 years who purchases any alcoholic beverage, who consumes any such beverage in any on-sale premises, or who possesses any such beverage on any street or highway or in any public place open to the public is guilty of a misdemeanor. Existing law also provides that any person under the age of 21 years who attempts to purchase any alcoholic beverage from a licensee, or the licensee's agent or employee, is guilty of an infraction.

This bill would grant immunity from criminal prosecution for any person under the age of 21 years who is subject to prosecution under the above where the person under the age of 21 years called 911 and reported that another underage person was in need of medical assistance due to alcohol consumption and conformed to other specified requirements, as described.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) ~~Any Except as provided in Section 25667, any~~ person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3) *or Section 25667*, any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b), *where prosecution of the previous violation was not barred pursuant to Section 25667*, shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if

1 available, in the area where the violation occurred or where the
2 person resides.

3 (2) Except as provided in paragraph (3), any person who violates
4 subdivision (a) by furnishing an alcoholic beverage, or causing an
5 alcoholic beverage to be furnished, to a minor shall be punished
6 by a fine of one thousand dollars (\$1,000), no part of which shall
7 be suspended, and the person shall be required to perform not less
8 than 24 hours of community service during hours when the person
9 is not employed and is not attending school.

10 (3) Any person who violates subdivision (c) shall be punished
11 by imprisonment in a county jail for a minimum term of six months
12 not to exceed one year, by a fine of one thousand dollars (\$1,000),
13 or by both imprisonment and fine.

14 (f) Persons under the age of 21 years may be used by peace
15 officers in the enforcement of this section to apprehend licensees,
16 or employees or agents of licensees, or other persons who sell or
17 furnish alcoholic beverages to minors. Notwithstanding subdivision
18 (b), any person under the age of 21 years who purchases or attempts
19 to purchase any alcoholic beverage while under the direction of a
20 peace officer is immune from prosecution for that purchase or
21 attempt to purchase an alcoholic beverage. Guidelines with respect
22 to the use of persons under the age of 21 years as decoys shall be
23 adopted and published by the department in accordance with the
24 rulemaking portion of the Administrative Procedure Act (Chapter
25 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
26 Title 2 of the Government Code). Law enforcement-initiated minor
27 decoy programs in operation prior to the effective date of regulatory
28 guidelines adopted by the department shall be authorized as long
29 as the minor decoy displays to the seller of alcoholic beverages
30 the appearance of a person under the age of 21 years. This
31 subdivision shall not be construed to prevent the department from
32 taking disciplinary action against a licensee who sells alcoholic
33 beverages to a minor decoy prior to the department's final adoption
34 of regulatory guidelines. After the completion of every minor
35 decoy program performed under this subdivision, the law
36 enforcement agency using the decoy shall notify licensees within
37 72 hours of the results of the program. When the use of a minor
38 decoy results in the issuance of a citation, the notification required
39 shall be given to licensees and the department within 72 hours of
40 the issuance of the citation. A law enforcement agency may comply

1 with this requirement by leaving a written notice at the licensed
2 premises addressed to the licensee, or by mailing a notice addressed
3 to the licensee.

4 (g) The penalties imposed by this section do not preclude
5 prosecution or the imposition of penalties under any other provision
6 of law, including, but not limited to, Section 272 of the Penal Code
7 and Section 13202.5 of the Vehicle Code.

8 SEC. 2. Section 25662 of the Business and Professions Code
9 is amended to read:

10 25662. (a) ~~Any~~ *Except as provided in Section 25667, any*
11 person under the age of 21 years who has any alcoholic beverage
12 in his or her possession on any street or highway or in any public
13 place or in any place open to the public is guilty of a misdemeanor
14 and shall be punished by a fine of two hundred fifty dollars (\$250)
15 or the person shall be required to perform not less than 24 hours
16 or more than 32 hours of community service during hours when
17 the person is not employed or is not attending school. A second
18 or subsequent violation shall be punishable as a misdemeanor and
19 the person shall be fined not more than five hundred dollars (\$500),
20 or required to perform not less than 36 hours or more than 48 hours
21 of community service during hours when the person is not
22 employed or is not attending school, or a combination of fine and
23 community service as the court deems just. It is the intent of the
24 Legislature that the community service requirements prescribed
25 in this section require service at an alcohol or drug treatment
26 program or facility or at a county coroner's office, if available, in
27 the area where the violation occurred or where the person resides.
28 This section does not apply to possession by a person under the
29 age of 21 years making a delivery of an alcoholic beverage in
30 pursuance of the order of his or her parent, responsible adult
31 relative, or any other adult designated by the parent or legal
32 guardian, or in pursuance of his or her employment. That person
33 shall have a complete defense if he or she was following, in a
34 timely manner, the reasonable instructions of his or her parent,
35 legal guardian, responsible adult relative, or adult designee relating
36 to disposition of the alcoholic beverage.

37 (b) Unless otherwise provided by law, where a peace officer
38 has lawfully entered the premises, the peace officer may seize any
39 alcoholic beverage in plain view that is in the possession of, or
40 provided to, a person under the age of 21 years at social gatherings,

1 when those gatherings are open to the public, 10 or more persons
2 under the age of 21 years are participating, persons under the age
3 of 21 years are consuming alcoholic beverages, and there is no
4 supervision of the social gathering by a parent or guardian of one
5 or more of the participants.

6 Where a peace officer has seized alcoholic beverages pursuant
7 to this subdivision, the officer may destroy any alcoholic beverage
8 contained in an opened container and in the possession of, or
9 provided to, a person under the age of 21 years, and, with respect
10 to alcoholic beverages in unopened containers, the officer shall
11 impound those beverages for a period not to exceed seven working
12 days pending a request for the release of those beverages by a
13 person 21 years of age or older who is the lawful owner or resident
14 of the property upon which the alcoholic beverages were seized.
15 If no one requests release of the seized alcoholic beverages within
16 that period, those beverages may be destroyed.

17 (c) The penalties imposed by this section do not preclude
18 prosecution or the imposition of penalties under any other provision
19 of law, including, but not limited to, Section 13202.5 of the Vehicle
20 Code.

21 SEC. 3. Section 25667 is added to the Business and Professions
22 Code, to read:

23 25667. Any person under the age of 21 years shall be immune
24 from criminal prosecution under subdivision (b) of Section 25662
25 and Section 25658, where the person establishes all of the
26 following:

27 (a) The underage person called 911 and reported that another
28 underage person was in need of medical assistance due to alcohol
29 consumption.

30 (b) The underage person provided his or her name to the 911
31 operator.

32 (c) The underage person was the first person to make the 911
33 report.

34 (d) The underage person remained on the scene with the
35 underage person in need of medical assistance until that medical
36 assistance arrived and cooperated with medical assistance and law
37 enforcement personnel on the scene.